

Response: The table below summarizes the current requirements and the proposed changes to Articles 7-11 and 7-14. I have provided responses to the individual comments and questions below.

Event	Current responsible party	Current Reference	Proposed responsible party	Proposed Reference
Damage to a existing property caused by third party	Department	Article 7-11.4	Same as current	Article 7-11.1 (The language was moved from 7-11.4 to 7-11.1)
Damage to a existing property caused by the Contractor	Contractor	Articles 7-11.1 and 7-11.2	Same as current	Articles 7-11.1 and 7-11.2
Damage to the Work (defined in 1-3) caused by a third party	Contractor	Article 7-14	Shared between Department and Contractor	Article 7-14

Dave,

I had good discussion with Rudy on Monday. I believe if you all would consider to issues that seem to be in everyone's comments we could move forward with pretty good buy-in.

- 1) Instead of basing replacement cost on unit price bid or statewide average let's use force account specs. In many instances you may find the repair is more costly than a new installation due to tearing out and disposing of damaged one. In other times the repair may only be for a partial item rather than the entire one (sign replaced, but not foundation, etc.). The statewide average or the unit price may not accurately reflect cost of that particular item in that location.

Response: The Department agrees. Change made.

- 2) Please consider removing the \$2000 deductible when dealing with unknown 3rd party damage. The assessing of the "first \$2000" seems very unfair.

Response: The proposed change is a risk sharing compared to the current requirement of all risk allocated to the contractor. The Department does not want to absorb more risk associated with damage caused by an unknown third party. The Department recognizes and understands Industry's desire for a more equitable risk allocation which is why the Department initiated this proposed specification change and Industry may mitigate this risk through construction prices. With these changes the Department will have data that can be reviewed to assess the risk allocation. No changes made at this time.

Thanks,
Bob

This seems to be very one-side for FDOT.

I'm assuming the Builders Risk insurance idea didn't pan out, as we had anticipated.

If the contractor does not submit a damage report for a known third party within the required time (not specified), the contractor is not eligible for any repayment by FDOT. **Response: Agree that a report is required to seek reimbursement from the Department. Language has been added clarifying that the contractor may choose to pursue recovery themselves from the third party and providing a timeframe to provide the report to the Department. In that case, can the contractor go after the third party for payment? Response: Yes, but if unsuccessful, the Contractor can't then seek reimbursement from the Department. Language added. We typically recover overhead and profit when we do recover dollars. Response: See above response to comment 1 from Bob Burleson.**

As Bob mentions below, the Contractor has to take every necessary precaution against damage to the work. This is a tough sentence. We would love to shut down a facility or not open new lanes to traffic, but this is typically beyond our control. We have no means of making sure that drivers carry the minimal required insurance. We do not license drivers, or take away licenses of bad drivers.

Response: This is existing language that is unchanged. Shutting down a facility is not an option the vast majority of the time. The standard indexes and traffic control plans address the various conditions for maintaining traffic through the work zone.

7-14:

For known third parties:

Why the \$2000 deductible? I feel the contractor should be paid the full amount whenever FDOT recovers those dollars. Remove the 'may reimburse'. If FDOT decides not to go after the third party, they should still pay the contractor the cost of the repair. Again, why should there be a deductible. We don't know how aggressive FDOT will be on this matter.

Response: The Department aggressively pursues recovery for damages and has a high success rate of recovery. The Department's intention is to reimburse the deductible when damages are recovered, but the Department will retain the option if some unknown situation occurs.

For unknown third parties:

The 50% seems reasonable, but I don't understand the \$2,000 deductible. The contractor is already stuck with the method of determining repair costs. In many cases the statewide average will not cover repairs. For instance a sub mobilizing to repair a short section of guardrail, will likely charge a mobilization fee. The bid units for temporary concrete barrier include some handling costs, but the material costs are typically discounted for salvage at the end of the project. So we are already taking a hit. The cost to repair accident damage, is often more expensive than the cost of new work, since there is typically removal and incidental repairs required as well as installation. Of course FDOT will only remember those few times when it might work out in our favor.

Response: See above response to comments 1 and 2 from Bob Burleson above.

JC

"I think this is a good compromise, keeping in mind that all damages are currently 100% the responsibility of the contractor."

Response: Thank-you.

That's not how the Spec reads now. In 7-11.1, as it reads now, it states that repairs must be made at the Contractor's expense for damage to an existing structure caused by the construction operations or equipment. IT also states that we must "Preserve from damage all property which is in the vicinity of or in any way affected by the Work. Third Party damage to an existing sign doesn't fall into this and is the sole responsibility of the Department.

Response: See above summary table.

In the Department's addition in 7-14, they state that "The Contractor will take charge and custody of the Work, and take every necessary precaution against damage to the Work..." If this is the new rule, then when we request a reduction in the speed limit from 70 to 60 mph to keep the public from bouncing off of each other, as we routinely do, the Department shouldn't be allowed to deny the request , as they routinely do, unless there is some danger to the travelling public. If we're that responsible for it, we need more control. Hell, barrier wall on both sides and down to one lane.

Response: This is existing language that is unchanged. Shutting down a facility is not an option the vast majority of the time. The standard indexes and traffic control plans address the various conditions for maintaining traffic through the work zone.

As for the deletion of payment for restoring damaged crash cushions and the \$2,000 deductible per occurrence for damage by third parties, this isn't right. Most damaged signs aren't \$2,000. So, this will be borne solely by the Contractors/subs. At some point, if this is implemented, we'll all get smart and add some amount to our bids to cover this additional risk-shift. I guarantee the MOT subs will increase the crash cushion costs by 1,000%; as they should. The Department is betting that we will continue to slit each other's throats, at least for a few years, and they will gain the windfall. What they should do is pay for damages to existing property 100% (Response: That is the current requirement that is unchanged. See above summary table.), pay nothing for damages by a known third party that has adequate coverage (we can go after the insurance) (Response: Language added clarifying it the contractor's option to either seek reimbursement from the Department or pursue recovery themselves, but not both.), and they should pay only true cost for damage to newly installed work done by an unknown third party (Response: Paying actual costs split 50/50 subject to the deductible is what is proposed, see response to comment 1 from Bob Burleson. Paying invoice plus 20% for crash cushions is replaced by actual costs.); my opinion.

Bob
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Bob,

I believe this spec is better than what currently we have, but could use some tweaking. Here are my comments :

- 1) Am I right to interpret 7-11 and 7-14 that the cost of repairs to damage to **Existing** property will be reimbursed 100% to the Contractor and that the cost of repairs to damage to the **Work** (new installations) will be handled by 7-14? If so, that should be stated clearly.

Response: Correct.

- 2) \$2,000 Deductible – 7-14 states that the Department will pursue reimbursement from known third parties and **if successful may** reimburse the Contractor for the deductible?? I guess this would be dependent on how much the FDOT would be reimbursed by the Insurance Co. in relation to the total claim submitted?? If so, then the spec should be restated. The use of the word “may” leaves it open to the CEI’s whim and interpretation of this..

Response: The Department’s intention is to reimburse the deductible when full damages are recovered, but the Department will retain the option if some unknown situation occurs.

- 3) Most of the items HSD installs are the above ground items that normally get hit – guardrail, cable rail, light poles, signs, permanent attenuators, ITS, and signal items. Many of the hits will be under the \$2,000 threshold. This will be dealt with by including extra costs in the bid for this risk. Will they reduce the deductible to \$1,000.

Response: With these changes the Department will have data that can be reviewed to assess the risk allocation. No changes made at this time to the deductible amount. Language added clarifying it the contractor’s option to either seek reimbursement from the Department or pursue recovery themselves, but not both.

- 4) There will be much repair of “New work” and certainly existing property that may be partial or not covered by existing contract unit pricing. So, I would assume we will be allowed to price the work. For example, if a light pole is hit, the foundation may survive the hit. Spec isn’t clear on how repairs on partial or new pay items (existing property) will be handled ??

Response: See response to comment 1 from Bob Burleson.

- 1) “Take every necessary precaution” – Can this be eliminated/modified, as it will leave it open to the CEI’s opinion as to whether a concrete barrier wall or something else should have been placed in front of every light pole for protection. The necessary precautions are usually included in the MOT plans and the Standard Indexes.

Response: This is existing language that is unchanged. Agree that the standard indexes and traffic control plans address the various conditions for maintaining traffic through the work zone.

- 2) The language in the last paragraph of proposed Section 7-14 **“may, at its discretion, reimburse”** leaves Contractors at the FDOT’s mercy for compensation of repairs due to unforeseeable causes - such as: Acts of God - Hurricanes, sink holes, tornadoes. This could be a very large risk. For example, will the FDOT force contractors to fix hurricane damage on the ongoing projects?

This could get expensive if sign structures start blowing over. Can we get them to delete this paragraph?

Response: This is existing language that is unchanged. The Department's intention is to reimburse the Contractor in these situations and past experience has shown this to be true, but the Department will retain the option if some unknown situation occurs.

Regards,
Lou Buenaventura